Supreme Court, U. S.
FILED
AUG 30 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-359

WILLIAM J. HORD and BLANCHE M. HORD, *Appellants*

v.

REUBIN ASKEW, etc., ET AL., *Appellees.*

On Appeal From the Supreme Court of Florida

JURISDICTIONAL STATEMENT

JERRIS LEONARD
LEONARD, COHEN, GETTINGS AND SHER
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
202/872-1095

GEORGE W. DEAN
P.O. Box F
Destin, Florida 32541
904/837-6922

NORTON BOND
300 East Government Street
Pensacola, Florida 32501
904/432-0945

MATTHEW W. BURNS
106 West Azalea
Long Beach, Mississippi 39560
601/865-2525

Counsel for Appellants

August 30, 1978

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

Page

Opinion Below 1

Jurisdiction 3

Constitutional and Statutory Provisions Involved .. 3

Question Presented 5

Statement

1. History and Factual Setting 5
2. Proceedings Below 7

How the Federal Question was Raised and Decided Below 10

The Federal Question Is Substantial 11

Conclusion 19

Appendix 1a

Partial Final Judgment 1a

Judgment of Supreme Court of Florida 4a

Notice of Appeal to The Supreme Court 5a

CASES: Page

Atlantic C.L.R. Co. v. *Phillips*, 332 U.S. 168 (1947) ... 17

East Saginaw Salt Mfg. Co. v. *East Saginaw*, 80 U.S. (13 Wall.) 373 (1872) 18

Forbes Pioneer Boat Line v. *Board of Commissioners*, 258 U.S. 338 (1922) 18

Indiana ex rel Anderson v. *Brand*, 303 U.S. 95 (1938) 13, 17

Liner v. *Jafco, Inc.*, 375 U.S. 301 (1964) 17

McGee v. *Mathis*, 71 U.S. 143 (1866) 13, 14, 15

Murray v. *Charleston*, 96 U.S. 445 (1877) 16

Straughn v. *Camp*, 293 So.2d 698 (Fla. 1974), *appeal dismissed*, 419 U.S. 891 (1974) 9, 10, 15, 16, 17, 18

United States Trust Co. v. *New Jersey*, 431 U.S. 1 (1977) 13, 15, 16, 18

Urie v. *Thompson*, 337 U.S. 163 (1949) 17

CONSTITUTIONAL STATUTES AND RULES:

Article I, Section 10, Clause 1, Constitution of the United States 3, 7, 9, 10, 11, 12, 15, 17, 19

28 U.S.C. § 1257(2) 3

28 U.S.C. § 1341 18

28 U.S.C. § 2103 3

Chapter 71-133, Laws of Florida, 1971 ....2, 3, 5, 7, 8, 9, 10, 12, 15, 19

Florida Statutes Section 196.001(2) 3, 7

Florida Statutes Section 196.012(5) 3-4

Florida Statutes Section 196.199(2)(a) 3, 4

Section 9, Chapter 29336, Special Laws of Florida, 1953 .....5, 6, 8, 11, 12, 14-15

Florida Rule of Civil Procedure 1.140(c) 8

Florida Appellate Rule 2.1 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

WILLIAM J. HORD and BLANCHE M. HORD, *Appellants*

v.

REUBIN ASKEW, etc., ET AL., *Appellees.*

On Appeal From the Supreme Court of Florida

JURISDICTIONAL STATEMENT

OPINION BELOW

The judgment of the trial court is not reported but is set forth in the Appendix, *infra*, 1a to 3a. The *per curiam* opinion of the Supreme Court of Florida is reported in *William J. Hord, et al.* v. *Reubin Askew, et al.*, 359 So. 2d. 455 (Fla. 1978), and is set forth in the Appendix, *infra*, 4a.

This appeal originated in a suit for declaratory judgment and injunctive relief brought by Appellants. The complaint was in two counts. Count One, which is involved in this appeal, named as defendants the Appellees State of Florida, Department of Revenue of the State of Florida, the Governor and Attorney General of Florida, Okaloosa County, Florida, and the

Okaloosa County School Board, Board of County Commissioners, Property Appraiser and Tax Collector. Count Two, which is not involved in this appeal, remains within the jurisdiction of the trial court.

The Appellants, husband and wife, are the lessees of a 99 year lease executed for substantial cash consideration by the lessor Okaloosa Island Authority, an agent of Appellee Okaloosa County, Florida, a political subdivision of the State of Florida.

Motions for Judgment on the pleadings pertaining only to Count One were filed by the State of Florida, the Attorney General and Department of Revenue, and the Okaloosa County School Board and Property Appraiser. The Motions were granted by order of the trial court on July 15, 1977. The Order expressly reserved for further consideration the issues raised by Count Two.

The order of the trial court was appealed to the First District Court of Appeal. On February 23, 1978, prior to considering the merits of the appeal, the Court of Appeal determined that its jurisdiction had been improvidently granted and, pursuant to Florida Appellate Rule 2.1, transferred the appeal to the Supreme Court of Florida. The Opinion of the Supreme Court of Florida affirming the trial court was filed on May 18, 1978, and, no Petition for Rehearing being filed, became final on June 2, 1978. Timely Notice of Appeal to this court was filed in the Supreme Court of Florida on June 1, 1978. As the Supreme Court of Florida clearly decided Appellants' challenge to the constitutionality of a Florida statute, Chapter 71-133, Laws of Florida, 1971, in favor of the constitutionality of the statute, this matter is appropriately brought to this Court by appeal. In the event this

Court does not consider appeal the appropriate mode of review, Appellants request that this appeal be acted upon as a petition for writ of certiorari under the provisions of 28 U.S.C. § 2103.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2), this being an appeal which draws into question the validity of Chapter 71-133, Laws of Florida, 1971, *infra*, pp. 5 to 10, on the grounds that it is repugnant to Article I, Section 10, Clause 1 of the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article I, Section 10, Clause 1 of the Constitution of the United States.

This case also involves Sections 196.001(2), 196.012 (5) and 196.199(2)(a), Florida Statutes, 1971 (originally adopted as Sections 16, 1 and 11 of Chapter 71-133, Laws of Florida, 1971), which sections are found in Volume I, Official Florida Statutes, 1971, at pp. 816-817 and 824-825 respectively and are set forth below:

> § 196.001 Property subject to taxation.—Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:
>
> . . .
>
> (2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.
>
> § 196.012 Definitions.—For the purpose of this chapter the following terms are defined as follows except where the context clearly indicates otherwise:

. . .

(5) Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any lease-hold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, authority or other public body corporate of the state, is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit, or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocations of public funds. The term 'governmental purpose' shall include a direct use of property on federal lands in connection with the federal government's space exploration program. Real property and tangible personal property owned by the federal government and used for defense and space exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt.

. . .

§ 196.199 Exemptions for property owned by governmental units.—

. . .

(2) Property owned by the following governmental units but used by nongovernmental lessees shall only be exempt from taxation under the following conditions:

(a) Leasehold interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities and other public bodies corporate of the state shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal or public purpose or function, as defined in §196.012(5). In all such cases all other interests in the leased property shall also be exempt from ad valorem taxation.

This case also involves Section 9, Chapter 29336, Special Laws of Florida, 1953, which section is set forth below:

> Section 2 (11). To make all contracts, enter into all leases, execute all instruments, and do all things necessary, desirable or convenient to carry out the powers, duties and purposes herein granted;
>
> Section 3 (a). The county commissioners are authorized and mandatorily required to delegate to and vest power and authority . . . to . . . Okaloosa Island Authority . . . to enter into leases and contracts;
>
> Section 9. All the real and personal property owned, controlled or used by the county or the authority, including real and personal property rented or leased to others by the county or authority, shall be exempt from state, county, municipal and all other ad valorem taxes of every kind.

QUESTION PRESENTED

DOES CHAPTER 71-133, LAWS OF FLORIDA, 1971, IMPAIR THE OBLIGATION OF APPELLANTS' LEASEHOLD CONTRACT FOR A TOTAL AD VALOREM TAX EXEMPTION DURING THE TERM OF THEIR 99-YEAR LEASE?

STATEMENT

1. History and Factual Setting

"Okaloosa Island" is the colloquial, though incorrect, name referring to those portions of the eastern end of Santa Rosa Island which lie within Okaloosa County, Florida. Although county-owned, virtually all of Okaloosa Island is leased to private individuals or corporations as a county revenue-raising measure.

Appellants' leasehold is a modest residential parcel located within Okaloosa Island.

Prior to 1950, the land now called Okaloosa Island belonged to the Federal government. In that year, pursuant to Public Law 395 of the 81st Congress, the United States deeded the land to Okaloosa County, Florida. By Special Act the 1953 Florida Legislature enacted Chapter 29336, Laws of Florida, 1953, creating the "Okaloosa Island Authority" and vesting the authority with rights and powers over the land in question, including the power to lease to private persons. In addition, Chapter 29336 expressly stated in Section 9:

> All the real and personal property . . . rented or leased to others by the county or authority, *shall be exempt from state, county, municipal and all other ad valorem taxes of every kind.* (emphasis added).

On September 25, 1958, Appellants, specifically relying on the express statutory provisions that the property "shall be exempt from . . . ad valorem taxes of every kind," and on specific representations of the employees and agents of Okaloosa County that the subject real property was and would continue to be tax-exempt, paid the County $4,000.00 for the right to enter into a ninety-nine year lease of the small parcel at a fixed annual rent, payable also to Okaloosa County. The written lease was then executed, and for a period of fifteen years, all parties abided faithfully by the terms of the lease and no ad valorem taxes whatsoever were levied. All rents to date have been paid.

In 1971, thirteen years after Appellants' lease was executed, the Florida Legislature enacted Chapter 71-133, Laws of Florida, 1971, which is codified in Sections 196.001 *et seq,* Florida Statutes, 1971. *Inter alia,* Chapter 71-133, provides that private leaseholds of county realty shall be subject to taxation, that leaseholds for term of 99 years or more shall be assessed as if the leasehold were fee simple, and that tax exemptions granted leaseholds shall continue only when the lessee performs a governmental, municipal, or public purpose as defined in the statute. Appellants do not contend that they perform any of the narrowly enumerated purposes or functions, hence Chapter 71-133 has the explicit and immediate effect of repealing and revoking Appellants' bargained-for, and paid-for, tax exemption.

Since the passage of Chapter 71-133, the taxing authorities have attempted to levy and collect ad valorem taxes on Appellants' leasehold.

2. Proceedings Below

To determine their rights and status under the lease agreement and statutes in question, Appellants filed suit in the Circuit Court of Okaloosa County, Florida on January 25, 1977. Appellees were defendants in the trial court and Appellees before the Supreme Court of Florida. The complaint filed with the trial court contained two counts; only Count One is involved in this appeal.

Count One alleged defendants' violation of the United States Constitution Article I, Section 10, Clause 1, based on the averred facts that defendants represented the State of Florida and its respective political subdivision in an official capacity; that plaintiffs are lessees from de-

fendant Okaloosa County pursuant to lease agreement dated September 25, 1958; that pursuant to Chapter 29336, Laws of Florida, 1953, defendant County Commission, through its agent, the Okaloosa Island Authority, was granted by the Florida Legislature the power to lease real property which includes the subject property, and, further, that said statute specifically exempted said real property from ad valorem taxes of "every kind"; that thereafter, plaintiffs, in reliance on the tax exemption established in Chapter 29336, Laws of Florida, 1953, and on the specific representations of the employees and agents of the County that subject real property was, and would continue to be exempt from ad valorem taxes, entered into the stated 99-year lease with the County paying a consideration of $4,000.00 plus fixed annual rent; that for a period of fifteen years the County abided by its agreement and collected no taxes on the property; that by enacting Chapter 71-133, Laws of Florida, 1971, the Florida Legislature attempted to repeal the tax exemption contained in Chapter 29336 and impose taxation on 99-year leases; and that, pursuant to Chapter 71-133, defendants attempted to levy and collect ad valorem taxes on plaintiffs' leasehold.

In May 1977, defendants State of Florida, Attorney General, Department of Revenue, Okaloosa County School Board and the Property Appraiser of Okaloosa County, hereafter referred to as Appellees, filed Motions for Judgment on the Pleadings pursuant to Florida Rule of Civil Procedure 1.140(c), thereby admitting all facts alleged in Count One of the complaint.

The Motions all contained the identical language: "All issues sought to be raised by the complaint have

been legally determined adverse to Plaintiffs' interests by the Florida Supreme Court in the case of *Straughn* v. *Camp,* 293 So.2d 689 (Fla. 1974) appeal dism. 419 U.S. 891, 95 S.Ct. 164, 42 L.Ed.2d 135 (1974)." *Straughn* was the only authority cited. The Motions contained no further argument.

On July 15, 1977, the Circuit Court issued the order subsequently appealed, styled "Partial Final Judgment". The order expressly construed the Motions as applying only to Count One and only to the moving parties. Count Two and the non-moving defendants were retained within the jurisdiction of the trial court.

The Circuit Court based its order on *Straughn* v. *Camp, supra,* and decisions subsequent thereto. The Circuit Court found that Chapter 71-133 had expressly repealed the tax-exempt status plaintiffs (Appellants) had previously enjoyed, then held:

> As to those movant-defendants, Plaintiffs contend that the enactment of Chapter 71-133 is unconstitutional on its face and as applied to them in that it violated Article I, Section 10 of both the United States and Florida Constitutions, in that it impairs the obligation of the subject lease contract.
>
> Merely because plaintiffs leaseholds were originally granted tax exemption and they enjoyed tax exempt status for a number of years, affords no basis for forever removing and completely immunizing them from taxation. Such tax exempt status may be changed by a subsequent legislature.
>
> It is well established that one legislature cannot bind its successors with respect to the exercise of the taxing power, and that contract rights

are ordinarily not beyond the taxing power but are generally subject thereto. *Straughn* v. *Camp*, supra. (App. 2a to 3a).

No discovery was conducted prior to the Circuit Court's granting of the Motions. At the time of the entry of the Partial Final Judgment the record consisted of the complaint, an answer filed by the Board of County Commissioners, and the Motions for Judgment on the Pleadings which admitted the averments in the complaint.

On August 9, 1977, Plaintiffs, hereafter referred to as Appellants, filed an appeal in the District Court of Appeal of Florida, First District. On February 23, 1978, the District Court of Appeal held jurisdiction to be granted improvidently and transferred the appeal to the Supreme Court of Florida.

Briefs were filed, and oral argument was held on May 10, 1978. On May 18, 1978, the Supreme Court of Florida affirmed the trial court without discussion, relying solely on *Straughn* v. *Camp, supra.* This judgment became final on June 2, 1978. This final judgment is the judgment appealed to this Court.

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The initial complaint of Appellants filed in the Circuit Court of Okaloosa County, Florida, specifically alleged an impairment of Appellants' contractual lease obligation by act of the Appellees in violation of Article I, Section 10, Clause 1, United States Constitution. No other cause of action was alleged.

The trial court expressly found the issue in controversy to be the constitutionality of Chapter 71-133,

Laws of Florida, 1971, in light of plaintiffs' Article I, Section 10, Clause 1 challenge. The trial court upheld the constitutionality of the Florida statute and of Appellees' conduct pursuant thereto.

The Supreme Court of Florida affirmed the judgment of the trial court. No issue other than the impairment of Appellants' contract was before the Supreme Court of Florida. This issue was fully briefed and argued. The sole effect of the judgment of the Supreme Court of Florida is to determine the issue of constitutionality in favor of the Florida statute in question.

THE FEDERAL QUESTION IS SUBSTANTIAL

This case presents substantial federal questions of critical importance to Appellants' well-being. The explicit nature of the contractual impairment, the immediacy of harm to Appellants, and the utter absence of *bona fides* displayed by the Florida Legislature in repudiating a State contract, are magnified by the failure of the trial court and the Supreme Court of Florida to accord Appellants' constitutional claims diligent consideration. Only a federal court can remedy the situation; only this Honorable Court can find the necessary jurisdiction to accord Appellants a true day in court.

Appellants have a written 99-year lease contract with Okaloosa County, Florida, a political subdivision of the State of Florida. Appellees are the legal representatives of the County and State and other political entities in privity with the State. Appellants' contract, by virtue of explicit statutory stipulation found in Chapter 29336, Laws of Florida, 1953, contains an ad valorem tax exemption for the term of the lease.

The Florida Legislature, by enacting Chapter 71-133, Laws of Florida, 1971, has impaired Appellants' contractual rights by repealing the express tax exemption in the thirteenth year of the lease, and imposing taxes. Appellees are currently attempting to execute the statute.

It is not disputed by Appellees that Chapter 71-133, Laws of Florida, 1971, expressly repeals Appellants' ad valorem tax exemption prior to the expiration of Appellants current lease. The only dispute revolves around whether or not Appellants could have or do have a contract for such exemption.

At the time Appellants executed the lease, Chapter 29336 was the governing statute. Appellants were induced to pay a premium price for the lease from Okaloosa County, rather than make a cheaper fee simple purchase of similar property in an adjoining county, by the stipulated tax exemption. The repeal of the exemption destroys Appellants' rightful expectation concerning the tract. By affirming without comment, the judgment of the Florida Supreme Court now on appeal carries forward three erroneous propositions found in the trial court's opinion:

(1) Appellants have no contract for a tax exemption;

(2) the federal impairment clause is inapplicable to Florida's taxation statutes because a state cannot contract away its financial powers; and

(3) the federal issues posed by Article I, Section 10, Clause 1, are subject to binding state court interpretation.

The sum total of these propositions is the virtual nullification of the impairment clause in Florida. This result is, of course, absurd. The United States Constitution is the Supreme Law of the Land. However, it is not clear that the decision on appeal acknowledges the Doctrine of Supremacy.

Each of the three propositions gleaned from the judgment on appeal violate controlling United States Supreme Court decisions. The first proposition is contrary to *McGee* v. *Mathis*, 71 U.S. 143 (1866), which is directly on point in facts and law; the second has been laid to rest by *United States Trust Co.* v. *New Jersey*, 431 U.S. 1 (1977), this Court's most recent significant impairment case; and the third defies a long string of decisions including *Indiana ex rel Anderson* v. *Brand*, 303 U.S. 95 (1938). These errors mandate consideration of the federal issues by this Court.

Notwithstanding the erroneous first proposition, Appellants' tax exemption is indisputably part of their 99-year lease contract. In *McGee* v. *Mathis, supra*, this Court, on facts astonishingly similar to those of the instant case, held that a state ad valorem tax exemption was contractual. *McGee* dealt with federal lands ceded to Arkansas, just as the present appeal deals with federal lands deeded to Florida. In *McGee*, the State of Arkansas by virtue of its Levy Act of 1857 issued for value received, negotiable scrip redeemable for certain portions of the ceded land. Section 14 of the Levy Act contained the following tax-exemption provision:

> To encourage . . . purchasers and contractors to take up said lands, all said swamp and overflowed lands shall be exempt from taxation . . . . 71 U.S. at 143.

This tax exemption was not expressed on the face of the scrip. *Id.* at 148. Subsequently Arkansas enacted legislation taxing the land represented by the scrip. The Arkansas Supreme Court upheld the validity of the tax against challenge by scrip-holders based on the federal impairment clause. In reversing, the United States Supreme Court ruled:

> It seems quite clear that the act . . . constituted a contract . . . *Id.* at 156.

And with regard to Arkansas' subsequent imposition of tax, the Court stated:

> This was clearly an impairment of the contract. The State could no more change terms of the contract by changing the stipulated character of the land to be conveyed in satisfaction of the scrip as to liability to taxation, then it could abrogate the contract altogether by refusing to receive the scrip at all in payment for the land. *Id.* at 157.

The present case is so factually similar to *McGee* that no viable distinction can be argued in good faith. The present case includes ceded federal land, a written instrument conveying an interest in the land, a tax exemption clearly stipulated in the very legislation which authorized the instrument, and payment to the State of valuable consideration induced by the stipulated tax exemption. The stipulations found in the two statutes are virtually identical:

> [A]ll said swamp and overflowed lands shall be exempt from taxation . . . . § 14, Arkansas Levy Act of 1857.
>
> [A]ll the real and personal property . . . rented or leased to others by the County or Authority . . . shall be exempt from . . . ad valorem taxes of every kind. § 9, Chapter 29336, Laws of Florida, 1953.

McGee thus is dispositive of all the Constitutional issues, and especially the "existence of contract issue", raised by Appellants. It is apparent that the opinion on appeal evaded rather than addressed this firm and binding precedent. Nowhere in the record of the present case, or in the cited Florida opinion of *Straughn* v. *Camp,* 293 So. 2d 698 (1974), *appeal dismissed,* 419 U.S. 891 (1974), is there any citation to *McGee.* The reason for the omission is obvious: the judgment now on appeal, the "binding" *Straughn* decision, and the imposition of ad valorem tax pursuant to Chapter 71-133 are all totally irreconcilable with *McGee.*

The applicable principle to be derived from *McGee* is simply that, with regard to revenue raising transactions, Article I, Section 10, Clause 1 requires States, including Florida, to play fair. This principle has been reaffirmed with resounding effect in this Court's latest significant ruling on impairment of contract, *United States Trust Co.* v. *New Jersey, supra.*

Regarding the second proposition, which rehashes an obsolete version of the "reserved powers" doctrine, the *United States Trust Co.* holding is absolutely clear: the State of Florida, despite the attempt of the Florida Supreme Court in *Straughn* to establish the contrary, can contract away its taxing power and has done so in the present case. The instant case involves a financial obligation, and, thus, as a threshold matter, may not be said automatically to fall within the reserved powers that cannot be contracted away. *United*

States Trust Co., supra, 431 U.S. at 25. *Accord, Murray* v. *Charleston,* 96 U.S. 445 (1877). A "purely financial" obligation of a State, in this case an obligated tax-exemption, is not necessarily a compromise of reserved powers. 431 U.S. at 25. Florida is not completely free to consider impairing the obligation of its lease contract with Appellants on a par with other policy alternatives. 431 U.S. at 31. Whatever the propriety of Florida binding itself to a future course in other contexts, its power in 1958 to enter into an effective, purely financial arangement regarding taxing Appellants' lease cannot be questioned. 431 U.S. at 24. Florida and Okaloosa County can always find a use for extra money. If Florida can reduce its financial obligation whenever it wants to spend more money for something else, the Contract Clause would provide no protection at all. 431 U.S. at 26. The truth is, when Florida sought in 1953 to become a landlord of its federally-ceded property solely to raise revenue by collecting rent, it abandoned its cloak of absolute sovereignty and came down to the level of an ordinary individual. *Murray* v. *Charleston, supra.* The "reserved powers" argument in the context of this transaction is an absurdity.

The third erroneous proposition is embodied in the summary disposition of this case, relying solely on the state-court opinion in *Straughn* v. *Camp, supra.* The instant case was not decided below on a well-developed record. Rather, it is the result of disposition prior to discovery or trial on the merits, and affirmance without discussion. This alone evinces an intention on the part of the Florida judiciary to disregard rational analysis of the federal issues raised. This intent be-

comes even more invidious when it is realized that the summary denials of Appellants' valid constitutional claims were based on a record in which each and every factual allegation in Appellants' complaint stands admitted. These admissions make out an air-tight Article I, Section 10, Clause 1 claim. Yet, the courts below have seemingly disregarded Florida's own lore of evidence, presumptions, and statutory construction, as well as controlling federal precedents, to single out federal impairment clause challenges to Florida taxation for hostile and prejudiced treatment.

The justification given by the trial court's opinion was ". . . the authority of *Straughn* vs. *Camp,* 293 So. 2d 698, decided by the Supreme Court of Florida in 1974, and decisions subsequent thereto." (App. 1a).

It is questionable whether any non-diversity case litigated entirely over federal constitutional issues should be decided without citation to any federal cases. It is even more questionable whether such litigation should be expressly based on a single state case. Local law cannot render federal questions moot or prevent their determination. *Urie* v. *Thompson,* 337 U.S. 163 (1949); *Liner* v. *Jafco, Inc.,* 375 U.S. 301 (1964). In the instant case, there is no question of statutory construction or state law involved. The existence of Appellants' contract and the fact of its impairment are federal questions, and are not subject to conclusive state-court determination. *Atlantic C.L.R. Co.* v. *Phillips,* 332 U.S. 168 (1947); *Indiana ex rel Anderson* v. *Brand,* 303 U.S. 95 (1938).

The reliance on *Straughn* to foreclose the consideration of the impairment question is doubly dangerous

in light of the trial court's additional finding that:

> It is well established that one legislature cannot bind its successors with respect to the exercise of the taxing power, and that contract rights are ordinarily not beyond the taxing power but are generally subject thereto. *Straughn* vs. *Camp,* supra. (App. 3a).

This assertion is the exact opposite of the true case. The State's power to contract away a portion of its taxing power has been emphatically upheld for over a century. *United States Trust Co.* v. *New Jersey, supra; East Saginaw Salt Mfg. Co.* v. *East Saginaw,* 80 U.S. (13 Wall.) 373 (1872). It is clear that Florida courts, in the dubious tradition of the resoundingly reversed *Forbes Pioneer Boat Line* v. *Board of Commissioners,* 258 U.S. 338 (1922), are continuing to display a pattern of insulating unconstitutional legislation from objective judicial review, and are unwilling to give bona fide consideration to claims relying on the impairments clause. This policy has brought grievous harm to plaintiffs and poses a threat to their constitutional rights. They are unable to find a forum in Florida, and are barred from federal courts. 28 U.S.C. §1341. It is imperative that the genuine constitutional claims of Appellants be given a hearing in a forum especially capable of fairly deciding these claims, the United States Supreme Court.

The matter on appeal here is of vital importance to the Appellants. Appellants are not a large corporation or persons of great wealth; they are not VIP's; Appellants are a simple retired couple who make their modest home on the small parcel of land now subject to Florida's ad valorem tax. In 1958, they paid to

Florida what was by Appellants' standards a sizeable consideration, several thousand dollars out of their life savings, for the leasehold now being taxed. At that time they believed the leasehold they were paying for would be tax exempt for the duration of the lease. They paid a premium price for the lease because of the tax exemption. This expectation was an essential part of Appellants' planning for their retirement living. They had every justification to expect that the contracted-for tax exemption would be honored: their expectation is protected by Article I, Section 10, Clause 1 of the United States Constitution.

CONCLUSION

Chapter 71-133 expressly repudiates, and thus in violation of Article I, Section 10, Clause 1, impairs Florida's contractual obligation to provide Appellants a 99-year tax exemption. This contractual obligation exists by virtue of explicit statute, and such a contract was within the scope of the powers of the Florida legislature. The contrary judgment of the trial court as affirmed by the Supreme Court of Florida is erroneous and should be reversed. The cursory, prejudicial handling of these issues by Florida courts mandates that this Court review the case to prevent gross infringement of Appellants' substantive rights. The questions are substantial, bona fide and crucial to Appellants' future well-being.

For the foregoing reasons probable jurisdiction should be noted and plenary consideration given.

Respectfully submitted,

JERRIS LEONARD
LEONARD, COHEN, GETTINGS AND SHER
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
202/872-1095

GEORGE W. DEAN
P.O. Box F
Destin, Florida 32541
904/837-6922

NORTON BOND
300 East Government Street
Pensacola, Florida 32501
904/432-0945

MATTHEW W. BURNS
106 West Azalea
Long Beach, Mississippi 39560
601/865-2525

Counsel for Appellants

August 30, 1978

APPENDIX

IN THE CIRCUIT COURT IN AND FOR
OKALOOSA COUNTY, FLORIDA

Civil Action No. 77-632

WILLIAM J. HORD, ET AL, *Plaintiffs*,

VS.

REUBIN ASKEW, ET AL, *Defendants*.

PARTIAL FINAL JUDGEMENT

This cause was heard on Motions for Judgment on the Pleadings filed by the State of Florida, Robert L. Shevin, as Attorney General of the State of Florida, Harry L. Coe, Jr., as Executive Director of the Department of Revenue of the State of Florida, Okaloosa County School Board and Howard Hilburn as Property Appraiser of Okaloosa County.

The Motions only pertain to Count 1 of the Complaint and do not affect Okaloosa County, Florida, The Board of County Commissioners of Okaloosa County, Florida, nor Joseph "Buck" Stokes as Tax Collector of Okaloosa County.

The Motions are granted on behalf of all Movants, for the reasons hereinafter stated and, more particularly, upon the authority of *Straughn* vs. *Camp*, 293 So.2d 698, decided by the Supreme Court of Florida in 1974, and decisions subsequent thereto.

The Plaintiffs in this cause were lessees under a Lease Agreement entered into on September 25, 1958, with the Okaloosa Island Authority, copy of which was attached to the Complaint. The Lease provided for a term of 99 years with an option to renew for 99 years and leased the property for residential purposes.

The history of the Okaloosa Island Authority was very similar to that of the Santa Rosa Island Authority in the

Straughn vs. *Camp* case, in so far as is material to this case, so it will not be set forth in detail. Suffice it to say that the Okaloosa Island Authority was created by Special Act of the 1953 Florida Legislature, Chapter 29336, and vested with the power and authority of the Board of County Commissioners as same pertains to those portions of Santa Rosa Island as may be owned by Okaloosa County, Florida, or in which said County may have a proprietary interest, from time to time.

This same act provided in Section 9—"All the real and personal property owned, controlled or used by the County or the authority, including real and personal property rented or leased to others by the County or Authority shall be exempt from state, county, municipal and all other ad valorem taxes of every kind."

This was the posture of the law as to the tax-exempt status of the Plaintiffs' property at the time they entered in the subject lease agreement.

The exemption thus provided was carried forward in the Florida Statutes until the 1971 Florida Legislature enacted Chapter 71-133, which expressly repealed the tax-exempt status that Plaintiffs had previously enjoyed.

As to these movant-defendants, Plaintiffs contend that the enactment of Chapter 71-133 is unconstitutional on its face and as applied to them in that it violated Article I, Section 10 of both the United States and Florida Constitutions, in that it impairs the obligation of the subject lease contract.

Merely because plaintiffs' leaseholds were originally granted tax exemption and they enjoyed exempt status for a number of years, affords no basis for forever removing and completely immunizing them from taxation. Such exempt status may be changed by a subsequent legislature.

It is well established that one legislature cannot bind its successors with respect to the exercise of the taxing power, and that contract rights are ordinarily not beyond the taxing power but are generally subject thereto. *Straughn* vs. *Camp,* supra.

The Court finds no basis for holding that the imposition of ad valorem taxation on plaintiffs' leasehold would impair the obligation of contract.

It is, therefore

ORDERED:

1. Plaintiffs Lease Agreement was subject, as a matter of law, to the assessment of ad valorem taxes for and on behalf of the School Board of Okaloosa County, Florida, for the year 1972 and thereafter.

2. Nothing herein contained shall be construed to affect the rights of plaintiffs as same pertains to Okaloosa County, Florida, or the Board of County Commissioners of Okaloosa County, Florida, which matters are hereby reserved for further consideration upon due notice to all parties affected thereby.

Conformed copies furnished all counsel of record.

ORDERED in Okaloosa County, Florida, this 15th day of July, 1977.

ERWIN FLEET

ERWIN FLEET
CIRCUIT JUDGE

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1978

CASE NO. 53, 529

WILLIAM J. HORD, et al., *Appellants,*

vs.

REUBIN ASKEW, etc., et al., *Appellees.*

CIRCUIT COURT

CASE NO. CIVIL ACTION 77-632

Opinion filed May 18, 1978.

An Appeal from the Circuit Court in and for Okaloosa County, Erwin Fleet, Judge.

Norton Bond, Pensacola, Florida; and Matthew W. Burns, Long Beach, Mississippi, for Appellants.

Robert L. Shevin, Attorney General, and E. Wilson Crump, II, Assistant Attorney General, Tallahassee, Florida; and David L. Selby of Selby, Chesser, Wingard and Barr, Fort Walton Beach, Florida, for Appellees.

PER CURIAM.

Affirmed on the authority of Straughn v. Camp, 293 So.2d 689 (Fla. 1974), app. dism., 419 U.S. 891 (1974).

It is so ordered.

OVERTON, C. J. ADKINS, BOYD, ENGLAND, SUNDBERG, HATCHETT and ALDERMAN, JJ., Co.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1978

CASE NO. 53, 529

WILLIAM J. HORD, et al., *Appellants,*

vs.

REUBIN ASKEW, etc., et al., *Appellees.*

CIRCUIT COURT

CASE NO. CIVIL ACTION 77-632

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is given that William J. Hord and Blanche M. Hord, Appellants in the above-styled action, hereby take appeal to the United States Supreme Court from the final judgment of the Supreme Court of Florida, filed May 18, 1978, and becoming final on June 2, 1978. This appeal is taken under the provisions of paragraph (2) of Title 28, United States Code, Section 1257.

Dated:

Respectfully submitted,

HENRY R. BARKSDALE

HENRY R. BARKSDALE
Henry R. Barksdale, P.A.
300 East Government Street
Pensacola, Florida 32501
(904) 432-0945

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to E. WILSON CRUMP, II, ESQUIRE, Tax Division, Northwood Mall, Tallahassee, Florida; ROBERT E. LEE, ESQUIRE, Post Office Box 1447, Fort Walton Beach, Florida; JOHN R. DOWD, ESQUIRE, Post Office Box 129, Fort Walton Beach, Florida; and DAVID L. SELBY, ESQUIRE, Eglin Federal Credit Union Building, Fort Walton Beach, Florida, by depositing same in a United States mail box with first-class postage prepaid addressed as indicated above this 16th day of June, 1978.

HENRY R. BARKSDALE

HENRY R. BARKSDALE
Henry R. Barksdale, P.A.
300 East Government Street
Pensacola, Florida 32501
(904) 432-0945

Supreme Court, U. S.
FILED
OCT 10 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-359

WILLIAM J. HORD AND BLANCHE M. HORD, APPELLANTS

V.

REUBEN ASKEW, ETC., ET AL, APPELLEES

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION TO DISMISS OR AFFIRM

ROBERT L. SHEVIN
ATTORNEY GENERAL

HAROLD F.X. PURNELL
E. WILSON CRUMP, II
Assistants Attorney General
Department of Legal Affairs
The Capitol, LL04
Tallahassee, Florida
904/487-2142
Counsel for Department of Revenue

DAVID L. SELBY
Eglin Federal Credit Union Building
Fort Walton Beach, Florida
Counsel for Okaloosa County School Board

INDEX

Page

MOTION TO DISMISS OR AFFIRM..... 1

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND..... 2

B. PROCEEDINGS BELOW..... 5

ARGUMENT

POINT I..... 10

POINT II..... 13

POINT III..... 24

CONCLUSION..... 28

CERTIFICATE OF SERVICE..... 29

CITATIONS

Cases: Page

Armstrong v. Armstrong, 305 U.S. 568, 76 S.Ct. 629, 100 L.Ed. 705 (1956)..... 27

Brenner v. Gelernter, 90 So.2d 306 (Fla. 1956)..... 12

Flourney v. Weiner, 321 U.S. 253, 64 S.Ct. 548, 88 L.Ed 708 (1944).. 27

Fox Film Corp. v. Muller, 296 U.S. 207, 56 S.Ct. 183 (1935)..... 27

Hicks v. Miranda, 422 U.S. 332, 344, 95 S.Ct. 2281, 2289, 45 L.Ed.2d 223 (1975)..... 16

Honeyman v. Hanan, 300 U.S. 14, 18, 57 S.Ct. 350, 352 (1937)..... 26

Lykes Bros., Inc. v. City of Plant City, 354 So.2d 878 (Fla. 1978)... 25

McGee v. Mathis, 71 U.S. 143 (1866).....21,22,23

Straughn v. Camp, 293 So.2d 689 (Fla. 1974), appeal dism. 419 U.S. 891, 95 S.Ct. 164, 42 L.Ed.2d 135 (1974) 8,9,14,15,16,17,24

Wisconsin and Michigan Railway Co. v. Powers, 191 U.S. 379, 24 S.Ct. 107, 48 L.Ed. 229 (1903)..15,17,19,20,21

CONSTITUTIONS STATUTES AND RULES:

PAGE

Chapter 29336, Laws of Florida.....2,5

Chapter 71-133, Laws of Florida..4,6,13,14

Rule 1.130, Florida Rules of Civil Procedure..... 7

Rule 3.14a, Florida Appellate Rules, 1962..... 11

Rule 13, Supreme Court Rules.....1,11

Rule 13(1), Supreme Court Rules..... 10

MOTION TO DISMISS OR AFFIRM

Appellees Department of Revenue of the State of Florida and Okaloosa County School Board move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Florida on the grounds as follows:

1. The appeal is not taken in conformity with the rules of this Court, and specifically with Rule 13, Supreme Court Rules, in that this appeal was not docketed within ninety days of the entry of the judgment of the Florida Supreme Court herein sought to be appealed,

2. This appeal does not present to this Court a substantial federal question, and

3. It is manifest that the decision below rests on adequate state grounds.

STATEMENT OF THE CASE

A. Factual Background

In 1953 the Legislature of the State of Florida passed a special act, Chapter 29336, Laws of Florida. This act authorized the County Commissioners of Okaloosa County, Florida to develop and lease to others for development certain lands owned by it on Santa Rosa Island. The authority granted by that act was required to be vested in a board created therein to be known as the Okaloosa Island Authority. Paragraph 11 of Section 2 of the act gave the County Commissioners, and hence derivatively the Okaloosa Island Authority, the general power to contract to carry out the powers and duties of the act. No specific authority to contract for tax exemption was contained in the act, however. Section 9 of the Special

Act provided that all real property owned by the county or Island Authority, including real property leased to others by them, should be exempt from ad valorem taxes of every kind. The Special Act became effective July 1, 1953.

Some five years later, on September 25, 1958, the Appellants, William J. Hord and Blanche M. Hord, entered into a lease agreement with the Okaloosa Island Authority for a certain parcel of property on Santa Rosa Island in Okaloosa County. The Hords agreed to pay a total of $4,000.00 under terms set out in that agreement. An additional annual rental, in the amount of $75.00 at the time of the agreement, was provided for. The term of the lease was for a period of ninety-nine years with the lessees given an option to renew under the same terms for an additional ninety-nine years.

Title to any permanent buildings or improvements placed on the property by the lessees was to vest in Okaloosa County, subject to the terms of the lease. The two-page lease, containing thirteen paragraphs, made no mention of ad valorem taxes or exemption therefrom.

In 1971, the Legislature of the State of Florida passed Chapter 71-133, Laws of Florida. Section 14 of that act repealed "[a]ll special and local acts or general acts of local application granting specific exemption from property taxation." Section 16 of the act provided that leasehold interests in property owned by any political subdivision, agency, authority or other public body of the state should be subject to ad valorem taxation unless expressly exempted. The act took effect December 31, 1971. For 1972 and each succeeding year, qualified leasehold

interests on Santa Rosa Island, including the Hords' property subject hereof, have been assessed for ad valorem taxes by Okaloosa County and the Okaloosa County School Board. No ad valorem taxes were assessed against Santa Rosa Island leasehold interests until 1972 because of the existence of the ad valorem tax exemption provided by Section 9 of Chapter 29336, Laws of Florida, not because of the existence of any contractual covenants proscribing ad valorem taxation.

B. Proceedings Below

This case began with a two-count complaint for declaratory judgment filed by Appellants in the Circuit Court of the First Judicial Circuit of Florida in and for Okaloosa County, Florida, the state court of general trial jurisdiction for the county in which the property is located. Count One named as defendants

the Honorable Reuben Askew as Governor of the State of Florida, the Honorable Robert L. Shevin as Attorney General of the State of Florida, the Honorable Howard Hilburn as Property Appraiser of Okaloosa County, Florida, the Honorable Joseph "Buck" Stokes as Tax Collector of Okaloosa County, Florida, J. Ed Straughn as Executive Director of the Department of Revenue of the State of Florida, The State of Florida itself, Okaloosa County, the Okaloosa County School Board, and the Board of County Commissioners of Okaloosa County. Count One alleged that exemption from ad valorem taxes was part of the leasehold agreement which appellants had entered into and sought a declaration that the provisions of Chapter 71-133, Laws of Florida, which repealed appellants' ad valorem tax exemption and subjected their leaseholds to ad valorem taxation impaired the obligation of their contract,

either per se or as applied. Count One also prayed that the taxing authorities be enjoined from levying or collecting taxes on their property. Count Two named as defendants only Okaloosa County and the Board of County Commissioners of Okaloosa County, and alleged that they were contractually estopped from imposing ad valorem taxes on appellants' property and prayed for an injunction against their doing so. The Complaint had attached to it the leasehold agreement in question, thereby making it a part of the Complaint. See Rule 1.130, Florida Rules of Civil Procedure.

Answers and motions for judgment on the pleadings were filed on behalf of defendants Robert L. Shevin, J. Ed Straughn, Howard Hilburn, State of Florida, and Okaloosa County School Board. These motions alleged generally that under the facts properly pled in the complaints,

the legal issues raised as to each of these defendants had been fully resolved adverse to Plaintiffs' interests by the case of Straughn v. Camp, 293 So.2d 689 (Fla. 1974), appeal dism. 419 U.S. 891, 95 S.Ct. 164, 42 L.Ed.2d 135 (1974). A hearing was held on these motions before the Honorable Erwin Fleet, Circuit Judge. Following the hearing, Judge Fleet entered a Partial Final Judgment, granting the Motions for Judgment on the Pleadings as to all moving defendants. The case remained pending in Circuit Court as to those defendants who had not filed motions.

The Hords appealed the Partial Final Judgment to the District Court of Appeal, First District of Florida. On motion of the Department of Revenue, the case was transferred to the Supreme Court of Florida as laying within the appellate

jurisdiction of that court rather than a District Court of Appeal. Briefs were filed on behalf of the Hords, the Department of Revenue, and the Okaloosa County School Board. Oral argument was had.

Thereafter, on May 18, 1978, the Florida Supreme Court entered its opinion affirming the judgment of the trial court per curiam on the authority of Straughn v. Camp, supra. No petition for rehearing was addressed to this order. Notice of Appeal to this Court was filed in the Florida Supreme Court on June 19, 1978.

ARGUMENT

POINT I

THE APPEAL IS NOT BEING TAKEN IN CONFORMITY WITH THE RULES OF THIS COURT.

Rule 13(1), Supreme Court Rules, requires that a case be docketed within ninety days from the entry of the judgment appealed from. The present case was docketed on August 30, 1978. The judgment from which the appeal was taken was entered by the Florida Supreme Court on May 18, 1978. Thus, this appeal was docketed some one hundred and four days after the entry of the judgment appealed from.

It may well be that appellants were under the mistaken impression that their time did not begin to run until fifteen days after the date on which the opinion of the Florida Supreme Court was filed. However, this most definitely is not the case. Admittedly, the opinion of the Florida Supreme Court did bear the legend

at the top, "Not Final Until Time Expires to File Rehearing Petition and, If Filed, Determined." Rule 3.14a, Florida Appellate Rules, 1962, does allow fifteen days for the filing of a petition for rehearing. Thus, there is no question but that appellants could have petitioned for rehearing from the opinion of the Florida Supreme Court within fifteen days of the filing of the opinion below, and that, had they done so, that opinion would not be considered to have been rendered or entered within the meaning of Rule 13, Supreme Court Rules, until the filing of an order disposing of the petition. However, appellants made no effort to petition for rehearing. Under those circumstances, the judgment of the court is considered rendered or entered as of the date it was filed, not as of the date time expires to petition for rehearing.

In Florida jurisprudence, the rule is that if an act may be taken within a certain period of time which would render an otherwise final order non-final, but that act is not taken, the order is considered rendered as of the date of its original entry for purposes of computing time for subsequent appellate proceedings. Brenner v. Gelernter, 90 So.2d 306 (Fla. 1956).

POINT II

THIS APPEAL RAISES NO SUBSTANTIAL FEDERAL QUESTION.

Appellants urge that the question of whether Chapter 71-133, Laws of Florida impairs the obligation of their leasehold contract for, according to them, total ad valorem tax exemption during the duration of the lease, is a substantial federal question. Appellants seems to recognize that the holdings of the trial court and Florida Supreme Court turn on a finding that ad valorem tax exemption was not a part of the contract, rather than a holding that a contract for tax exemption exists which might be abrogated without violating the federal constitution. Appellants argue, however, that this court has in the past looked independently at the question of whether a contract exists rather than accepting a state court's determination of the existence

or scope of a contract as binding. This may have been true in the past but this determination under the facts of the present case, is so completely foreclosed by decisions of this court as to leave no room for real controversy.

First and foremost, the decision of Straughn v. Camp, supra, considered controlling by both of the state courts below should control here as well. That case dealt with an identical scheme for the development of the portion of the same island, Santa Rosa Island, lieing in a different county, Escambia County. A special act of the legislature had set up an authority with the power to lease the property for development purposes. The special act also provided for ad valorem tax exemptions. The taxpayers who litigated Straughn v. Camp claimed that the same provisions of Chapter 71-133, Laws of Florida, as are under

attack here impaired the obligations of their leasehold contracts. The trial court ruled in favor of the taxpayers on their impairment of contract argument. On appeal, the Florida Supreme Court, in a detailed opinion, considering other issues raised by the taxpayers as well, reversed. In support of its ruling on the impairment of contract argument, the Florida Court in Straughn v. Camp cited to this court's decision in Wisconsin and Michigan Railway Co. v. Powers, 191 U.S. 379, 24 S.Ct. 107, 48 L.Ed. 229 (1903) as one of the controlling authorities. See 293 So.2d at 692, 695.

The Florida Supreme Court's opinion in Straughn v. Camp was appealed to this Court, which dismissed for want of a substantial federal question. Camp v. Straughn, 419 U.S. 891, 95 S.Ct. 168, 42 L.Ed.2d 135 (1974). The facts of the

present case are strikingly similar to those in Straughn v. Camp. The parties are different; however the same statute is attacked as an impairment of contract for exactly the same reasons under virtually identical circumstances. It therefore appears obvious that this Court's determination in Straughn v. Camp that there was no substantial federal question would carry considerable weight as stare decisis in this case as well. In Hicks v. Miranda, 422 U.S. 332, 344, 95 S.Ct. 2281, 2289, 45 L.Ed.2d 223 (1975) this court held that a memorandum decision by it dismissing a direct appeal from a decision of a state court upholding a state statute against a federal constitutional attack was entitled to the weight of stare decisis, the Court saying

> ...if the Court has branded a question as unsubstantial, it remains so except when doctrinal developments indicate otherwise.

In the present case, appellants have not indicated any doctrinal developments which have occurred since 1974 which would compel review of this case in the face of the Court's refusal to review Straughn v. Camp.

As noted above, the Florida Courts have regarded the decision in Wisconsin & Michigan Railway Co. v. Powers, supra as the controlling precedent out of this Court on the point. In Wisconsin & Michigan Railway, the State of Michigan had enacted a statute in 1893 exempting from taxation any railway company building and operating a railroad line in a certain portion of the state for a period of ten years or until the gross earnings equaled $4,000 per mile. The taxpayer constructed a railroad in that portion of the state which never earned $4,000 in gross revenue per mile. In 1897 the Michigan legislature repealed the tax

exemption. The railroad filed suit to enjoin the collection of tax, claiming that the law which imposed the tax impaired the obligation of contracts.

This Court, in a unanimous opinion authored by Mr. Justice Holmes held that there was no impairment of obligation of a contract, because under the facts of the case, there was no contract. The Court distinguished this case from those where it was held that an exemption from taxation contained in a special charter could not be repealed.

The Court rejected the presence of a contract first on general principles of contract law. This Court recognized that the building of the railroad constituted a sufficient detriment to be consideration and that the tax exemption in the earlier statute could be viewed as a promise. Nevertheless, the Court found that there was not sufficient mutuality to form a

legally binding contract, saying,

> But the other elements are that the promise and the detriment are the conventional inducements each for the other. No matter what the actual motive may have been, by the express or implied terms of the supposed contract, the promise and the consideration must purport to be the motive each for the other, in whole or at least in part. It is not enough that the promise induces the detriment or the detriment induces the promise, if the other half is wanting. 191 U.S. 386 , 24 S.Ct. 108.

This analysis is very much applicable to the present case. It may very well be that the legislation enacted in 1953 was part of the inducement for the Hords to enter into their lease agreement with the Island Authority. However, the lease could not in any way have been an inducement for the tax exemption statute which had been enacted five years earlier.

After rejecting the presence of a contract on narrow considerations of contract law, the Court in Wisconsin &

Michigan Railway turned to a consideration of the nature of legislative tax exemptions to foster economic development, and held that this situation did not lend itself at all to the creation of a binding contract. The Court commented,

> The broad ground in a case like this is that, in view of the subject matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy, and providing for carrying it out, it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefore, it makes no promise to them. It merely indicates a course of conduct to be pursued until circumstances or its views of policy change. It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in, and action on the faith of, a statute, merely because their interest was obvious and their action likely, on the face of the law. 191 U.S. 387 , 24 S.Ct. 108-109.

Consistent with the foregoing, the Florida legislature in 1953 did nothing more than

make a policy pronouncement when it declared the property in question exempt from ad valorem taxation. It certainly did not specifically address the Hords with this promise of exemption even though it may have been foreseeable that persons like the Hords might have attempted to take advantage of the exemption. This does not prevent the legislature from changing public policy as it did in 1971, and repealing the exemption.

Of the various cases cited in Appellants' Jurisdictional Brief, the only one which comes close to being on point is that of McGee v. Mathis, 71 U.S. 143 (1866). This case was decided well before the Wisconsin & Michigan Railway case. In any event, McGee is distinguishable from the present case. In McGee the State of Arkansas set up by statute a scheme for reclaiming certain swamp

lands. Those who contracted for the reclamation project were to be paid in scrip which was redeemable out of the lands held by the state, unclaimed by others. The land so conveyed was exempted by statute from ad valorem taxation for a period of ten years or until reclaimed. In less than ten years, the exemption was repealed. A local levy on unreclaimed lands for the purpose of reclamation was sought to be imposed. It was this levy which was struck down as an impairment of the obligation of contract. The fundamental distinction between McGee and the present case is that in McGee, the conveyance of land in a tax exempt status in redemption of scrip was the contracted reimbursement which contractors were to receive for reclamation work. In the present case no work or detriment inure to the state for which the tax exemption is part of the compensation. Moreover, in

McGee, the Court appears to have been struck by the logical inconsistency of imposing a special tax for the same purpose (reclamation) for which the lands were originally conveyed tax exempt. Since the taxes at issue in the present case are imposed by the school board and county for general purposes, there is no such inconsistency herein.

POINT III

THE DECISION BELOW RESTS ON STATE LAW GROUNDS WHICH ARE ADEQUATE AND ENTIRELY DISPOSITIVE OF ALL ISSUES BEFORE THE SUPREME COURT OF FLORIDA.

As noted above, Appellants take the position that the question of whether there is a contract to begin with in impairment of contract cases is itself an issue which this Court has examined independently without being bound by state determinations. At most, however, this determination has gone only to the technical legal question of whether the facts reveal the presence of a contract. In the present case, the case which the Florida Supreme Court had considered controlling precedent, Straughn v. Camp, supra, had also held, under circumstances indentical to those found in the present case, that a political subdivision of the State of Florida lacked authority under the Florida Constitution and law to con-

tract for a tax exemption. Thus, the Florida Supreme Court noted,

> As before stated, there was no binding obligation on the part of the County or the Authority or the State, nor could there have been one constitutionally entered into by any of them, that never in the future could the legislature impose an ad valorem tax on plaintiffs' leasehold interests. 293 So.2d at 695, emphasis added.

The very limited extent to which a political subdivision in the State of Florida may contract with a private party for a tax exemption consistent with the state Constitution is set forth in Lykes Bros., Inc. v. City of Plant City, 354 So.2d 878 (Fla. 1978).

Whatever issues may properly be open to consideration by this Court, the question of whether the state's political subdivisions have authority under the State Constitution to contract for tax exemptions is a purely state question.

Where it is answered in the negative, as it has been under the facts below, it forecloses any necessity for a consideration of whether other elements necessary for a contract are present, or whether, otherwise assuming the presence of a contract for a tax exemption, the repeal of the exemption could be said to impair the obligation of a contract. Since in the present case, there was no authority to contract for an exemption, it was unnecessary for the Courts below to determine a federal question.

Under these circumstances, the operative jurisdictional principle is concisely stated in this Court's decision in Honeyman v. Hanan, 300 U.S. 14, 18, 57 S.Ct. 350, 352 (1937) as follows:

> Before we may undertake to review a decision of the court of a State it must appear affirmatively from the record, not only that the federal question was presented for decision to

> the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause. (emphasis added)

It is clear from other decisions of this Court that review will be denied where it is not demonstrated that a decision on the federal question was necessary to the decision appealed. Flourney v. Weiner, 321 U.S. 253, 64 S.Ct. 548, 88 L.Ed. 708 (1944). See also Armstrong v. Armstrong, 305 U.S. 568, 76 S.Ct. 629, 100 L.Ed. 705 (1956).

In addition to the above authorities, this Court's decision in Fox Film Corp. v. Muller, 296 U.S. 207, 56 S.Ct. 183 (1935), makes it clear that where a decision on state grounds below removes the necessity for considering the federal question, review will be denied. That is precisely the situation presented by the appeal at bar.

CONCLUSION

Wherefore, Appellees respectfully submit that this Court does not have jurisdiction to entertain an appeal in this matter and further that the question presented by this appeal is so insubstantial as to warrant no further argument. Appellees respectfully move the Court to dismiss the appeal or, in the alternative to affirm the judgment entered in the cause by the Supreme Court of Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to Mr. Jerris Leonard, Esquire, Leonard, Cohen, Gettings and Sher, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006; Mr. George W. Dean, Esquire, P. O. Box F, Destin, Florida 32541; Mr. Norton Bond, Esquire, 300 East Government Street, Pensacola, Florida 32501; and Mr. Matthew W. Burns, Esquire, 106 West Azalea, Long Beach, Mississippi 39560 this 6th day of October, 1978.

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL

BY: Harold F.X. Purnell

Harold F.X. Purnell
Assistant Attorney General
Department of Legal Affairs
The Capitol, LL04
Tallahassee, Florida
904/487-2142